

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
ABILENE DIVISION**

MARCUS MAXWELL,	§	
	§	
Plaintiff,	§	
	§	
v.	§	CIVIL ACTION NO. 1:18-CV-00179-C
	§	
ROBERT ALMANZA, JR., <i>et al.</i> ,	§	
	§	
Defendants.	§	

**ORDER ADOPTING REPORT AND RECOMMENDATION
OF THE MAGISTRATE JUDGE**

The United States Magistrate Judge made findings, conclusions, and a recommendation (FCR) in this case as to the disposition of Defendants’ [Robert Almanza, Jr., and Christopher Schmidt] Motion for Summary Judgment Limited to the Issue of Qualified Immunity. *See* Doc. 208. In short, the Magistrate Judge concluded that summary judgment based on qualified immunity is inappropriate at this time because genuine issues of material facts remain as to whether or not Defendants Almanza and Schmidt are entitled to qualified immunity on Plaintiff’s conditions-of-confinement and deliberate-indifference claims. Thus, the FCR recommends that the Court deny the motion and enter a scheduling order to govern further proceedings. Defendants Almanza and Schmidt filed untimely objections.¹ Doc. 210. Plaintiff filed a response. Doc. 212.

“The district judge must determine de novo any part of the magistrate judge’s disposition that has been properly objected to.” Fed. R. Civ. P. 72(b)(3); *see* 28 U.S.C. § 636(b)(1). In

¹ Written objections to the FCR entered on August 6, 2024, were due within 14 days—that is, on or before Tuesday, August 20, 2024. *See* Doc. 208 at 20, citing 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b). Defendants’ objections—filed on Wednesday, August 21, 2024, were therefore untimely. Defendants did not seek an extension of time or provide any explanation for the untimely filing.

contrast, the district judge reviews any unobjected-to findings, conclusions, and recommendations for plain error. The Court has examined the record and reviewed the unobjected-to portions of the FCR for plain error and, finding none, expressly accepts and adopts those portions of the Magistrate Judge's findings, conclusions, and recommendation.

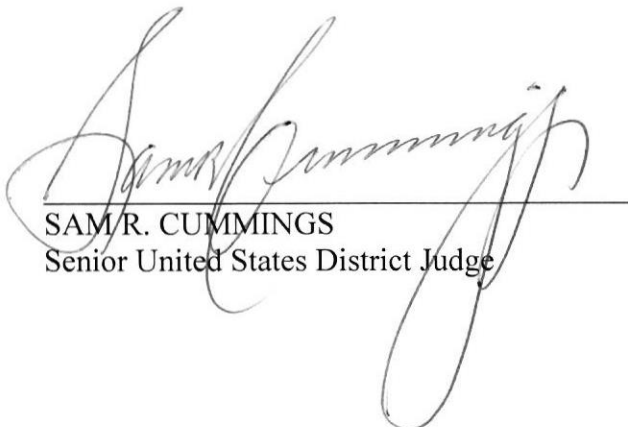
Additionally, although the defendants' objections were untimely, the Court has conducted a de novo review of the relevant portions of the FCR and the record in this case, as well as the Plaintiff's response to the objections. Defendants' objections include restatements of arguments made in the motion for summary judgment, and mere disagreement with the inferences made in Plaintiff's favor, application of the legal standards relevant to summary judgment motions and qualified immunity, and the conclusion that Plaintiff's constitutional rights were clearly established.

After considering the objections and Plaintiff's response, the Court overrules the objections, accepts and adopts the FCR of the Magistrate Judge. It is therefore ORDERED that Defendants' Motion for Summary Judgment Limited to the Issue of Qualified Immunity (Doc. 196) is DENIED.

The Court will enter a separate scheduling order setting forth dates for pretrial deadlines and filing dispositive motions.

SO ORDERED.

Dated September 9, 2024.



SAM R. CUMMINGS
Senior United States District Judge